IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 298 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JAYESH RAMESHBHAI SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 298 of 2000

MR KB ANANDJIWALA for Petitioner Nos. 1-4

MR SS PATEL, PUBLIC PROSECUTOR for Respondent No. 1

PARTY-IN-PERSON for Respondent No. 2

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: /08/2001

C.A.V. JUDGEMENT

#. The revisionists have preferred this revision challenging the order dated 24-4-2000 of the Metropolitan Magistrate, Ahmedabad, whereby he has ordered framing of charges against the four revisionists for the offences punishable under secs.498-A, 323, 504, 506 and 114 of the Indian Penal Code and also under sec.4 of the Dowry Prohibition Act.

#. A complaint was filed by Aarti Jayesh Shah, the complainant, who is respondent no.2 in this revision, making allegations of demand of dowry, cruelty - mental, as well as physical, hurling abuses on her and of abetment against the five accused. Respondent no.2, Chandraben Ramesh Shah was mother-in-law of the complainant who died not during the pendency of the complaint but before filing of complaint, which is clear from the description of accused no.2 in the title of the complaint. Accused no.1, Jayesh Ramesh Shah is husband of the complainant. Accused No.3, Lilaben Ramesh Shah is an unmarried sister-in-law of the complainant, Jayshreeben Sunilbhai Shah, respondent no.4 is married sister-in-law of the complainant, whereas, Sunil Himmatlal Shah, accused no.5 is the husband of accused no.4.

#. In support of the allegations made in the complaint, the complainant examined on oath herself, her father Jayantilal, Bhupendra, her maternal uncle and Dr.Mahendra.

#. After hearing the arguments and considering written arguments and material on record, the learned Magistrate found that the complaint against the accused no.2 Lilaben abated on account of her death, whereas, remaining four accused committed offences punishable under secs.498-A, 323, 504, 506 and 114 of the Indian Penal Code and under sec.4 of the Dowry Prohibition Act. Direction was, therefore, given by the learned Magistrate to frame charges against the accused for the aforesaid offences.

#. In this revision, initially the order issuing process against the accused under these sections was challenged, but after amendment of revision petition, which was allowed on 17-4-2001, order of issuance of process for the aforesaid offences was challenged and further prayer

was made for setting aside and quashing the order to frame charges under the aforesaid sections against the accused persons.

#. Shri KB Anandjiwala, learned counsel for the revisionists, Shri SS Patel, learned APP and Ms.Aarti Jayesh Shah, respondent no.2 were heard. Respondent no.2, initially, engaged advocates at different times, but at last she expressed her desire to argue the case in person, hence, she was heard in person.

#. The first prayer in the revision for quashing the order of issuance of process can not be granted after the impugned order was passed and the learned Magistrate directed for framing of charges under the aforesaid sections against the accused persons. The point for consideration is, whether the order directing framing of charges under the aforesaid sections is liable to be quashed.

#. Respondent no.2 in person raised certain legal objections at the close of her arguments, and as such, those objections are taken up first for deciding as preliminary objection.

#. She relied upon the case of KANTI BHADRA v. STATE OF WEST BENGAL 2000 CR.L.J. 746 (S.C.), where it was held that, for framing of charge, reasons are not to be recorded by the learned Magistrate and the order framing of charge can not be quashed merely on the ground that it is cryptic. The Supreme Court in this case has held that, if the trial Court decides to frame charge, there is no legal requirement that he should pass order specifying the reasons as to why to do so. Framing of charge itself prima facie shows that the trial Judge has formed the opinion upon considering police report and other documents and after hearing both the sides that there is ground for presuming that the accused has committed the offences concerned. Sec.246 of the Code of Criminal Procedure requires a Magistrate to record his reasons for discharging the accused, but there is no such requirement if he forms the opinion that there is ground for presuming that the accused has committed the offence, which he is competent to try. In such a situation, he is only required to frame a charge in writing against the accused.

##. The case of DHANLAXMI v. RP KUMAR AIR 1990 S.C. 494 referred by the respondent no.2 is distinguishable on facts. It is not a case where quashing of complaint has been prayed for under sec.482 of the Code by the

revisionists.

##. She had also referred the Apex Court's verdict in BIPIN PANCHAL v. STATE OF GUJARAT & ANR. 2000(1) DRUGS CASES 13. However, this case decided by the Apex Court relates to speedy trial and it has no relevance for the present revision. She has also referred to the judgment of the Andhra Pradesh High Court in B.SATYANARAYAN v. STATE OF ANDHRA PRADESH CR.L.J. 1435. This case is also distinguishable because it discusses the situation where reappreciation of evidence in revision is made by the revisional Court.

##. She has also relied upon the Apex Court's verdict in the STATE OF UTTAR PRADESH v. MANMOHAN AIR 1986 S.C. 1652, wherein, it was held that where the Magistrate had formed the opinion that there were grounds to presume that the accused has committed the offences punishable under sec.3 read with sec.7 of the Essential Commodities Act, and that the prosecution was not false, frivolous or vexatious or one which was by way of abuse of the process of law, the High Court could not quash the charge in exercise of the revisional powers. This is also not exactly applicable to the facts of the case, because there can be no direction for quashing of the charges, inasmuch as, only order for framing charge has been passed in the impugned order and not that charges have actually been framed by the learned Magistrate.

##. She further relied upon the case of RAMU v. JAGANNATH AIR 1984 S.C. 26. But, this case is also distinguishable on facts. Here, the Apex Court has held that in exercise of the revisional power, the order of acquittal should not be lightly set aside and the revisional jurisdiction is not to be lightly exercised. She also contended that the revision is not maintainable. But, this contention has to be repelled because sec.397 of the Code of Criminal Procedure provides that interalia the High Court may call for and examine the record for the purposes of satisfying as to correctness, legality or propriety of any finding, sentence or order recorded or passed by the inferior criminal Courts. Of course, the limitation is that the revisional power is not to be exercised in relation to any interlocutory order passed in appeal, inquiry, trial or other proceedings. Order to frame charge can not be said to be interlocutory order. If, order would have been in favour of the revisionists, the possibility of trial would not have arisen. It is because of order to frame charges that the revisionists have to face trial, hence, it is not an interlocutory order but a final order, against which, revision lies,

and in exercise of the revisional powers the High Court can examine correctness, legality or propriety of the impugned order. The revision is, therefore, maintainable.

##. After meeting these objections of the respondent no.2, party-in-person, I propose to consider the arguments of Shri KB Anandjiwala, who has assailed the impugned order mainly on two grounds. The first contention of Shri Anandjiwala has been that the entire incident took place within the jurisdiction of Bombay Courts, and as such, the Courts at Ahmedabad have no jurisdiction to entertain the complaint. The second contention has been that the complaint was filed against five persons, but no prima facie case has been made out atleast against the accused nos.2 to 4 and since accused no.2 was dead on the date of institution of the complaint, no action could be taken against her. Regarding accused no.1, it was contended by him that there is no material to proceed against him under sec.498-A of the Indian Penal Code, because there is no material to presume that demand of dowry was made by the accused no.1. He has also argued that there is tendency in such cases to implicate all the family members, whether married or unmarried, and such cases should be cautiously examined in view of the guidelines given by the Apex Court, and unless prima facie case is found against each accused, no action on such complaint can be taken.

##. It may be mentioned that the case was instituted on private complaint. It has been pointed out above that in support of the complaint, the complainant has examined herself, her father, her maternal uncle and a doctor who gave her treatment for jaundice. After considering the aforesaid materials and arguments, the learned Magistrate passed the impugned order. It is, therefore, an order under sec.246 of the Code of Criminal Procedure. The learned Magistrate was of the opinion that there is ground for presuming that the accused have committed offences triable under the aforesaid sections. Sec.245(1) of the Code could be attracted only when the Magistrate found that there was no case against the accused.

##. Sec.245(1) of the Code of Criminal Procedure provides that, if upon taking all the evidence referred to in sec.244, the Magistrate considers for reasons to be recorded that no case against the accused has been made out, which, if unrebutted would warrant his conviction, the Magistrate shall discharge him. In the instant case,

the learned Magistrate considered the evidence on record and found that it was not a case where no case against the accused has been made out, which, if unrebutted would warrant his conviction. However, it has to be seen whether this order is legal, correct and proper as envisaged under sec.397(1) of the Code of Criminal Procedure.

##. At this stage, reappraisal of the evidence by the revisional Court is certainly prohibited, but there is no total prohibition in going through the evidence with a view to find out evidence and material against each of the five accused. The question of substituting its own finding by the revisional Court over prima facie finding of the learned Magistrate does not arise in such cases. But, at the same time, the High Court has to see after all what offences were prima facie committed by the five accused and under which sections of the Indian Penal Code and Dowry Prohibition Act. If, there is no prima facie case to frame charges against the accused for the offences punishable under secs.498-A, 323, 504, 506 and 114 of the Indian Penal Code and sec.4 of the Dowry Prohibition Act, it can safely be said that the learned Magistrate has not applied his mind to these sections with reference to the evidence on record.

##. I have examined the statements of the complainant, her father, her maternal uncle and the doctor. There is no evidence in the statements of these witnesses to frame charge under sec.323 of the Indian Penal Code. The doctor has not stated that any apparent injury was caused to the complainant or complaint of pain was reported to him by the complainant. In the absence of any material to frame charge under sec.323 of the Indian Penal Code, the learned Magistrate committed illegality in directing framing of charge against all the accused under these sections. Of course, on account of death of accused no.2, it was ordered to abate the complaint against this accused. Likewise, I do not find any material or prima facie material on which the learned Magistrate could have directed framing of charges under secs.504, 506 and 114 of the Indian Penal Code. The direction to frame charges under these sections is the result of non-application of mind to the materials and prima facie materials on record. Hence, to this extent also the learned Magistrate committed illegality and passed illegal order, which can not be sustained.

##. Then remains the direction to frame charge under sec.498-A of the Indian Penal Code. Learned counsel for the revisionists Shri Anandjiwala argued that even this

direction could not be issued because the learned Magistrate has no jurisdiction to entertain the complaint. Therefore, the first contention of Shri Anandjiwala regarding lack of jurisdiction in Ahmedabad Court is to be considered. The contention of Shri Anandjiwala has been that the entire incident took place at Bombay and no incident took place within the jurisdiction of Ahmedabad Court, hence, the complaint was wrongly entertained by Ahmedabad Court. After considering the statements of the complainant and her two witnesses, I find that this contention can not be accepted. In para-6 of the complaint, it is averred that during August, 1994, the accused no.1 and his brother-in-law alongwith his uncle came to Ahmedabad at the parental house of the complainant and told her father very clearly that if the father of the complainant could give Rs.50,000=00 in cash then they are ready to keep the complainant with them, and if the father of the complainant is not ready to give money then they do not want under any circumstances the complainant and they want divorce, for which, they asked for the signature of the complainant. This averment, therefore, clearly shows that the learned Magistrate, on the basis of this averment, had jurisdiction to entertain the complaint because part of cause of action in the continuing offence occurred in Ahmedabad in August, 1994 when the accused no.1, his brother-in-law and his uncle demanded Rs.50,000=00 cash and on failure to fulfill the demand pressed that they want divorce. Aarti Shah, respondent no.2 in her statement, in support of the complaint under sec.244 of the Code of Criminal Procedure, stated that in August, 1994, her husband, husband's uncle and his brother-in-law came to Ahmedabad at her parental house alongwith one Sanjaybhai Shah, the husband of complainant's sister-in-law and they demanded Rs.50,000=00 from her father and told that they would keep with them only if complainant's father would give Rs.50,000=00, otherwise the complainant should sign the divorce papers. Similar statement was given by the complainant's father. Complainant's maternal uncle also stated that the accused, his brother-in-law Sunil, his uncle Chandrakant and the friend of Sunil came to Ahmedabad at complainant's house and after coming to Ahmedabad also they quarreled with Aarti. These materials are sufficient to conclude that the Ahmedabad Court had jurisdiction to entertain the complaint. I, therefore, do not find force in the contention of Shri Anandjiwala that the Ahmedabad Court had no jurisdiction.

##. The next contention of Shri Anandjiwala had been that, the complaint was filed against five persons but,

there is absolutely no prima facie case made out against accused nos.2 to 4, hence, atleast they are liable to be discharged. He further argued that against accused no.1, there is no prima facie material in terms of sec.498-A of the Indian Penal Code to proceed against him, inasmuch as, the cruelty defined in explanation to sec.498-A does not find prima facie support from the material on record. It is, therefore, proposed to examine what material has been collected by the complainant in her statement and also from the statement of her father, maternal uncle and the doctor against each accused.

##. It has been indicated above that the accused no.2, namely, the mother-in-law of the complainant expired, and in the complaint it is mentioned in the cause-title that she was already dead when the complaint was filed. Consequently, the complaint abates against her and it was rightly abated in the impugned order.

##. I have also indicated in the foregoing portion of this judgment that no prima facie material is found from the record to proceed against any of the remaining four accused under sec.323, 504, 506 and 114 of the Indian Penal Code. Then remains sec.498-A of the Indian Penal Code and sec.4 of the Dowry Prohibition Act.

##. The revisional Court, in exercise of its revisional power can sift the evidence only with a limited view to find out whether there is any material for proceeding against the accused nos.1, 3, 4 and 5 under these sections. It can not reappraise the evidence and substitute its own views over the assessment of evidence by the Magistrate for coming to a prima facie conclusion for framing charge.

##. Shri Anandjiwala has filed and referred the written statement of the complainant in the divorce case. However, this written statement was not brought before the learned Magistrate from the side of the accused persons, hence, for the first time, the copy of such written statement can not be considered for demolishing the case of prosecution.

##. Accused no.3 Lilaben Rameshbhai Shah, on the date of incident was unmarried sister of the accused no.1. I have considered the material on record, namely, the statements of the prosecution witnesses examined under sec.244 of the Code of Criminal Procedure and I do not find that this witness ever made a demand for dowry from the complainant. Likewise, there is no definite material that she treated the complainant with cruelty, on account

of which she can be proceeded under sec.498-A of the Indian Penal Code. As such, the material on record does not show that accused no.3 has committed any offence punishable under secs.323, 504, 506 and 114 of the Indian Penal Code and sec.4 of the Dowry Prohibition Act. She was liable to be discharged and the learned Magistrate, without application of mind to the material on record, passed the order for framing charge against this accused.

##. Jayshreeben Shah is accused no.4, who is married sister of accused no.1. Again, considering the material on record, I do not find that she used to remain present in the house of accused no.1 every time and that she used to treat the complainant with cruelty. Likewise, there is no evidence or material against her that she made demand for dowry from the complainant or from the parents of the complainant. Consequently, she could not be proceeded, nor any charge can be framed against her, rather she is liable to be discharged.

##. So far as accused no.5 is concerned, there is no evidence that he treated the complainant with cruelty. However, there is evidence for demand of dowry against this accused. It is averred in para-6 of the complaint that accused no.1 and his brother-in-law alongwith his uncle came to Ahmedabad at parental house of the complainant and told her father very clearly that if the father of the complainant would give Rs.50,000=00 in cash then they are ready to keep the complainant with them, and if the father of the complainant is not ready to give money then they do not want under any circumstances the complainant and they pressed for divorce, for which, they asked for the signature of the complainant. Evidence is also to the same effect. Thus, accused no.5 made demand of Rs.50,000=00 alongwith accused no.1 and uncle of accused no.1. Shri Anandjiwala contended that this demand was not in the nature of dowry demand, but for meeting the expenses incurred in marriage, because there was every possibility of divorce and the insistence was that, either the complainant should sign the divorce paper or the parents of the complainant may pay Rs.50,000=00 which was incurred in the marriage ceremony of the complainant and the accused no.1. At this stage, the evidence can not be appreciated. The face value of the allegation in the complaint and the oral evidence is that this could be in the nature of demand for dowry, and if this is so, then it furnishes material for proceeding against the accused no.1, as well as, against the accused no.5 under sec.4 of the Dowry Prohibition Act. At this stage, evidence is not to be sifted with a view to find out, whether it will be sufficient for conviction of the

accused. The only thing to be kept in mind is, that the evidence is such on which charge can be framed and the accused can be proceeded for trial. If, two views are possible from the averments made in the complaint and from the evidence, it would be incorrect to say that the view which is favourable to the accused should be taken at the initial stage of framing of charge. I, therefore, find that there is material to proceed against the accused no.5 under sec.4 of the Dowry Prohibition Act.

##. There is no material to proceed against the accused no.5 under any of the other sections. There is no evidence that he treated the complainant with cruelty. As such, he has to be discharged under all sections except under sec.4 of the Dowry Prohibition Act.

##. Then remains the case against the accused no.1. He is husband of the complainant. I have gone through the complaint, allegations and also the materials on record. The learned Magistrate has also found that there is evidence to proceed against this accused. However, Shri Anandjiwala has drawn my attention to sec.498-A of the Indian Penal Code, and referring to explanation to sec.498-A, he argued that cruelty defined in this section has not been prima facie made out from the materials on record, hence, sec.498-A is not applicable. In my view, explanations-(a) and (b) of sec.498-A of the Indian Penal Code are prima facie made out from the materials on record. Explanation-(a) of sec.498-A of the Indian Penal Code provides that, for the purposes of this section cruelty means any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. Explanation-(b) of sec.498-A of the Indian Penal Code provides that cruelty means harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. The material on record clearly shows that right from the very beginning the complainant was told that she has not brought adequate dowry as a result of which the accused no.1 could not go for honeymoon to Kashmir, Singapore, etc. and he had to satisfy himself by going to Mahabaleshwar only. There was constant mental torture given by this accused to the complainant. She was threatened that she would not be permitted to be kept in the house and that she should sign divorce paper under force, else Rs.50,000=00 should be paid by her parents. There is also material on record that she was taken near

window by the accused no.1 and was told that she should jump from the window and end her life. There was also threat to her that she would not be permitted to enter the house of the accused no.1. There are so many other allegations raised which are already in the statement of the three prosecution witnesses examined under sec.244 of the Code of Criminal Procedure and this furnishes material to proceed against the accused no.1 under sec.498-A of the Indian Penal Code. Further, as stated above, there is also material to proceed against this accused under sec.4 of the Dowry Prohibition Act.

##. I have gone through the pronouncement of the Apex Court in SHOBHA RANI v. MADHUKAR REDDY A.I.R. 1988 S.C. 121 and INDRASING M.RAOL v. STATE OF GUJARAT 1992(2) G.L.R. 596 referred by Shri Anandjiwala as to what constitutes cruelty. In these cases, concept of cruelty was considered after the trial concluded and the entire evidence was brought on record. In the case before me, it can not be said at this stage that the cruelty alleged by the complainant can not be established from evidence. If, there is prima facie material to show that the complainant was treated with cruelty by accused no.1 of the nature explained in explanation to sec.498-A of the Indian Penal Code, there is no reason to drop proceedings against him. Thus, the accused no.1 can be proceeded and charged under sec.498-A of the Indian Penal Code and under sec.4 of the Dowry Prohibition Act.

##. In view of the aforesaid discussions, the revision succeeds in part only. The impugned order of the learned Magistrate is modified as under :

(1) The complaint against the accused no.2 stands abated.

(2) Accused nos.3 and 4 are hereby discharged, inasmuch as, there is no prima facie material to proceed against them under any of the sections mentioned in the complaint.

(3) Accused no.5 shall be charged under sec.4 of the Dowry Prohibition Act, and is discharged under other sections of the Indian Penal Code. He shall be proceeded under sec.4 of the Dowry Prohibition Act.

(4) Accused no.1 is discharged under secs.323, 504, 506 and 114 of the Indian Penal Code, but he shall be charged and

tried under sec.498-A of the Indian Penal Code and under sec.4 of the Dowry Prohibition Act.

Dated :__/08/2001. (D.C. Srivastava, J.)

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